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“Equality of Opportunity”

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gender roles were perpetuated in common law, and women were underrepresented in legislative bodies and courts.

Opponents of the ERA. Several religious denominations opposed the ERA: Mormons because it could interfere with the traditional family, Catholics because it might require ordaining women despite the church's insistence on a male priesthood, and fundamentalist Protestants because of biblical prohibitions against women clergy. Among other objections was the idea that the ERA was unnecessary because of the equal protection clause of the Fourteenth Amendment and such legislation as Title VII of the Civil Rights Act of 1964 (extending the same protection to sex as to race) and the Equal Pay Act of 1963. Under the ERA, its opponents feared, even women with small children could not only be drafted but also assigned to combat duty. Homosexuals would gain the right to marry and to adopt children. Abortion would be protected through the amendment, and state regulations thereof would be preempted. Unisex dormitories, prisons, and restrooms could not be prohibited.

Philosophically, the ERA would shift state policy powers from the legislature to the judiciary, and from the states to the federal government. Some worried that the vague wording of the ERA could lead to unpredictable court decisions, and previous decisions on school integration, criminal rights, and abortion had led to a profound distrust of the federal courts, especially in the South.

The Decline of the ERA. Twenty-two states ratified the Equal Rights Amendment in 1972, and eight more did so in 1973. Yet only five more states ratified: The last, Indiana, did so in 1977. The holdout states were mainly in the South and West; Illinois was the only northern industrial state among them.

The ERA failed for several reasons. Nixon was the only president to give it his personal support, whereas Ronald Reagan actively opposed it. The Republican party platforms had included the ERA for several decades, but it did not in 1980 or thereafter. Conservative activist Phyllis Schlafly became a highly articulate and effective opponent of the ERA, raising arguments that it would force women to support idle husbands and would deprive them of preference in divorce and child custody cases. Some members of minority groups perceived the ERA as providing gains for middle-class white women at the expense of men and women of color. Male government workers feared that the ERA would undermine laws that gave war veterans preference in employment. The Soviet invasion of Afghanistan in 1979 brought about draft registration for men in 1980 and raised concerns about women in combat.

The ERA's supporters were unprepared for the intensity of the debate which arose in the late 1970's. Their last victory was getting Congress to vote a three-year extension of the ratification deadline in 1978, which proved fruitless: No additional states ratified despite boycotts, demonstrations, and even hunger strikes by the more radical ERA supporters. In 1983 the ERA was reintroduced in Congress, but it did not receive enough votes in the House to pass.

—R. M. Longyear

See also Civil Rights Act of 1964; Equal Pay Act; Equal protection of the law; Feminism; Gay rights; *Lochner v. New*

York; *Muller v. Oregon*; National Organization for Women (NOW); *Roe v. Wade*; Sex discrimination.

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Equality of opportunity

DEFINITION: The ideology that one's chance for economic success should depend on one's abilities and effort rather than on one's sex, race, socioeconomic background, or other such accidents of birth

SIGNIFICANCE: The U.S. government and courts since the 1950's have implemented numerous policies to promote equality of opportunity

American society is characterized by large job-related inequalities in income, prestige, and influence. These inequalities are commonly found to be acceptable provided that there is equality of opportunity. In other words, the competition for desirable positions should be fair so that individuals who are similarly qualified and motivated have similar chances to obtain these positions. It does not mean that individuals who are equally qualified and dedicated must equally succeed in economic life. Desirable positions are scarce; not everyone can win the race for these positions (equality of outcome), but the race can be made fair (equality of opportunity).

Minimally, equality of opportunity involves a situation in which one is not excluded from competing for desirable positions because of one's race, sex, or class background. More broadly, this ideal of justice requires that one's race, sex, and socioeconomic background do not negatively influence one's chances for economic success. Thus equality of opportunity calls for hiring processes, including recruitment and screening practices, free of discrimination against minorities and women. To make the competitive race for desirable positions fair, it is also necessary that men and women, people of different races, and the economically advantaged and disadvantaged all have equal educational opportunities for developing their abilities. The same applies to groups such as visually impaired individuals and people with physical disabilities.

During the 1950's and 1960's it became widely acknowledged that American society did not offer equal opportunity to all its citizens, and judicial and legislative action was undertaken to correct this situation. In *Brown v. Board of Education* (1954), the Supreme Court mandated racial integration in public schools, arguing that segregated schools deprive minority children of equal educational opportunity. Title VII of the Civil Rights Act of 1964 prohibits discrimination in employ-

ment. During the 1970's the federal government initiated affirmative action programs, requiring that employers not only refrain from intentional discrimination but also actively recruit women and minorities for underrepresented positions and eliminate bias in job criteria. These programs might involve that qualified minorities or women are hired or promoted instead of equally or seemingly more qualified white males. Critics view these programs as violating the equality of opportunity of white males, whereas their defenders maintain that they only eliminate the undeserved competitive advantage that white males have acquired because they are not subject to institutional discrimination as minorities and women are. Critics succeeded during the 1980's in curtailing but not eliminating affirmative action programs. Since the 1960's, various laws have been adopted that improve the educational and job opportunities of individuals who are physically impaired. Much less political attention has been given to addressing inequality of opportunity caused by economic poverty as such.

See also Affirmative action; *Brown v. Board of Education*; Civil Rights Act of 1964; Equal Employment Opportunity Act; Equal Employment Opportunity Commission (EEOC); Great Society; Racial and ethnic discrimination; *Regents of the University of California v. Bakke*; Sex discrimination.

Equitable remedies

DEFINITION: Remedies granted by a court using its equity jurisdiction as opposed to its legal jurisdiction

SIGNIFICANCE: Courts have power to expand the usual remedies available to compensate for a wrong; equity courts can fashion such remedies as they see fit in the name of substantial justice

Equitable remedies are those remedies originally granted by an equity court, as distinguished from a court of law. In the English common-law tradition, a court of law could give a plaintiff money, land, or some other property if the plaintiff won a lawsuit. These remedies were often inadequate, however, and did not give people substantial justice. As a result, the courts of equity were developed to expand the relief available. The number of equitable remedies expanded over time; the more traditional ones include injunction, specific performance, reformation, contribution, and estoppel.

An injunction is a legal writ issued by a court of equity directing someone to do or refrain from doing an act that threatens injury to someone else. It is issued only if the legal remedy is inadequate to prevent or pay for the damage threatened. Because injunctions limit the freedom of the person enjoined and often themselves cause damage or inconvenience, a court will grant an injunction only if the harm threatened outweighs the harm that may be caused by the injunction.

Specific performance is an order directed to parties to a contract, compelling them to perform their obligations under the contract. It is most often granted when the subject matter of the contract involves unique goods or land. In such cases, money damages are not sufficient to compensate the injured

party; for example, the money cannot be used to purchase an identical item when there is no identical item.

Reformation is an equitable remedy granted when a written instrument does not express the real agreement of the parties. A court will reform or rewrite the instrument to protect an innocent party. Deeds, contracts, and other instruments will be reformed where there has been fraud, error, mistake, or inadvertence. Normally, however, reformation will not be granted if a person had the opportunity to read a contract but failed to do so.

Contribution is the sharing of loss among several people. Two or more people may be liable on the same contract or may have committed a tort together. If one of these people has paid the whole debt or suffered the entire liability, the other parties must reimburse him or her for a proportionate share.

Estoppel is used in contract and similar contexts to prevent a person from denying certain facts. For example, one person may promise something to another. Though there is no legally enforceable contract to verify the promise, the second person may take action based on the promise. If the first person reneges on the promise, insisting that there was no contract, and the second person is harmed as a result, the first person can be estopped on the basis of equity.

Trust law has given rise to many equity issues. A constructive trust is imposed by a court when a person is wrongfully in possession of property belonging to someone else. The person in possession is said to hold the property in trust for the true owner.

See also Civil law; Civil remedies; Common law; Equity; Fiduciary trust; Nuisance; Restitution.

Equity

DEFINITION: A part of the justice system which seeks to do justice when legal remedies are inadequate

SIGNIFICANCE: Courts have the power to vary from strict legal rules in order to create substantial justice, and such "equity powers" have been used to transform law

Equity is an area of law that attempts to do substantial justice where the normal remedies and procedures of law are inadequate. Equity developed at an early date in England and was brought to America as part of the common-law tradition. The English courts of law were limited in their jurisdiction and the kinds of relief they could grant. They were also not responsive to changing conditions in society. As a result, people took their petitions to the king's chancellor, who had discretion to grant new forms of relief. Eventually an entire legal system known as equity developed from the chancellor's office. Today, however, most courts can grant both legal and equitable remedies.

Equity will not grant a remedy where the parties have an adequate remedy at law. Equity follows the law, so it will rarely undo rights created by law. Under the doctrine of laches, parties can lose their remedies if they wait too long to file their case in court. Under the clean hands doctrine, a party who seeks equity must not have acted unfairly.

See also Civil law; Common law; Equitable remedies; Injunction.